[illegible]—46,00[illegible]

HOME (194 7) Department.

NS SERIES.

G.O. NO. 1043

Dated 3rd November 1947.

P-b (e)

[Despatch Abstract.]

Criminal Appeal - Appeal against acquittal - Ballarat district - Sessions Judge, - [illegible] - C.A. No. 34 of 1947 - Application - Sanctioned.

From.

K.N.Anantaraman,Esq.,I.C.S., Secretary to Government
Dist. Magistrate,Bellary. Home Department)
Fort St.George, Madras.

No.C.1916/47 Home. Dated 27.9.47.

Sir,

Revision . C.A.34/47 on the file of Sessions Judge Bellary — for Revision of appellate judgments by moving the High Court in revision if requested.

In C.C.71/47 on the file of the Addl.First Class Magistrate Bellary the Textile Control Officer Bellary filed a charge sheet against the accused (1) Auram son of Parasuram Marwadi resident of Bellary and (2) Valchand son of Baggaji Marwadi for an offence under Sec. 7 of Essential Supplies (Temporary) Act,1946. After trial the Addl. First Class Magistrate acquitted A.1 and convicted and sentenced A.2 to undergo Rigorious imprisonment for three months. The Second accused,Valchand preferred an appeal to the Sessions Judge, Bellary against the orders of the Addl.First Class Magistrate Bellary. The Sessions Judge allowed the appeal and set aside the sentence of the lower court on the ~~xxx~~ ground that neither the existence of the order which the appellant is said to have ~~xx~~ violated nor its due publication is proved.

The matter was referred to the Public Prosecutor Bellary. He is

pt.o.

of opinion that under the Essential Supplies (Temporary powers) Act of 1946, the provisions of Rule 119 of the Defence of India Rules are omitted and that all rulings under the D.O.I. Act do not apply so far as the New Act is concerned in view of the omission from the Act the provisions of Rule 119. He further adds that oral evidence has been adduced to the effect that the notification which was contravened has been duly published and that the court can take judicial notice of such publication. He is of opinion that the learned Sessions Judge is not right in saying that neither the existence of the order which the appellant is said to have violated nor its due publication is proved, and that this is a fit case for moving the High Court in revision. I entirely agree with his views.

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I therefore request that the Government may be pleased to move the High Court in revision to revise the orders of the Sessions Judge Bellary under Sec.439 Cr.P.C. passed in C.A.34/47 on the file of his Court.

Two copies of the judgments of the lower court and the appellate court and [illegible] of the Public Prosecutor Bellary are enclosed.

11 OCT 1947

nsn.Murthi/28.9.47

Enc: 3

Home department Endorsement No. 69328 F/47-1 dated 10-X-47 Referred to the Public Prosecutor, Madras for remarks on the proposal of the District Magistrate, Bellary. The reply to this reference should be sent not later than 5-11-47.

for secretary to Government 9/10/47

Dist. Magistrate. Date of judt: 28/9 P134(4) 9-9-47 3 months 2 days 9.12

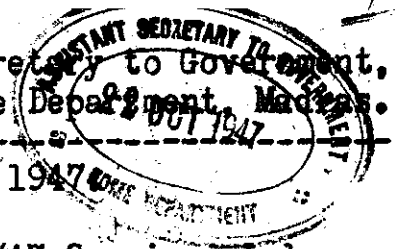
PP 1-2 ault

To The Public Prosecutor, Madras (with c.f. and judgment copies at (4) to be returned with reasons (R.D. 6-11-47)

V.L.ETHIRAJ ESQ., C.I.E.,
Bar-at-Law.,
Public Prosecutor, Madras.

To

The Secretary to Government,
Home Department, Madras.



Opn.No.104/47. dated 21st October 1947

Sir,

Sub: Appeal against acquittal - C.A.34/47, Sessions Judge, Bellary - C.C.71/47, Addl.1st Class Magistrate, Bellary - Forwarding opinion.

Ref: Endorsement No. 69328 F/47-1, Home, dated 10-10-47, I have the honour to forward herewith my opinion in the above matter.

2. The papers received for reference are returned herewith.

I have the honour to be,
Sir,
Your most obedient servant,

V L Ethiraj

Public Prosecutor.

Opinion.

The Sessions Judge, Bellary in appeal set aside the conviction and

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sentence passed by the Additional I Class Magistrate, Bellary on the 2nd accused for an offence under Section 7 of Essential Supplies (Temporary Powers) Act. The Sessions Judge acquitted the accused on the ground that the existence of the order contravened or its publication was not proved. The accused is alleged to have contravened clause 4 of the Madras Cloth dealers Control order in that he stored and sold cloth without licence. The order in question is published in the Fort St.George Gazette. The appellate Court could have taken judicial notice of the same. It is not necessary that in every case the existence of the order or its publication should be proved by evidence. The order of acquittal of the Sessions Judge is not correct. I am of opinion that an appeal against acquittal is likely to be successful.

A/

Public Prosecutor.

R/

21-11-41

Apl/3/44

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C. No. 69328 F/47

Proceedings in G.O. Ms No 3748, d. 1-12-47

Ps 9j

3/11/47

Home dept.

G.O. Ms. No. 4043 d 3.11.47

Criminal appeal- Appeal against acquittal Bellary dt. ~~Contd~~ Sessions Judge, Bellary C.A. No. 34 of 1947- Application- Sanctioned

Vm

Read:-

PP1-2 P.F. From the D.M., Bellary No. C 1916/47 Ma, d 27-9-47

PP3-8 P.F. From the P.P., Madras Cpn. No. 104/4 d 21-10-47.

ORDER:-

Ap 8 P.F. Under section 417 of the Code of Criminal Procedure, 1898, the Public Prosecutor, Madras is requested to present an appeal to the High Court against the acquittal by the Sessions Judge, Bellary of the appellant in

C.A. No. 340 of 1947 on his file.

30/10/47.

To

The Public Prosecutor,
Madras
(with copy of Appl-2 & E, P.S.C.R.
in orgl. and judgment
copies at (2, in orgl).

The D.M., Bellary

Date of filing of
P13 of (4) 9-7-47.
3 months time
9-12-47.